



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0088; FRL-10007-55-Region 9]

Air Plan Revisions; California; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, Federal New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA has determined that the continued presence of these rules in the SIP is inappropriate and potentially confusing and thus problematic for affected sources, the state, local agencies, and the EPA. The intended effect of this proposal is to delete these rules to make the SIP consistent with the Clean Air Act (CAA or “Act”). The EPA is also proposing to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions.

DATE: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0088 at <http://www.regulations.gov>, or via email to Kevin Gong, at gong.kevin@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments.

Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, Rules Office (AIR-3-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3073, or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Background

In this rulemaking, we address certain errors made over the years in connection with EPA actions on SIP revisions for the various air pollution control districts in California. In the first rule, published at 84 FR 45422 (August 29, 2019), we addressed errors associated with EPA actions on SIP revisions for the districts with names beginning with the letter A through the letter O. This proposed action follows the first action and addresses errors associated with EPA actions for the rest of the districts, i.e., those with names beginning with the letter P through the letter Z.

II. Why is the EPA Proposing to Correct the SIP?

The Clean Air Act was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to the EPA for incorporation into the SIP to fulfill the new Federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, the EPA's review of these submittals focused primarily on the new substantive requirements, and we approved many other elements into the SIP with minimal review. We now recognize that many of these elements were not appropriate for approval into the SIP. In general, these elements are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to make them federally enforceable by incorporating them into the applicable SIP. These include:

- A. Rules that prohibit emissions causing general nuisance or annoyance in the community.¹

Such rules address local issues but have essentially no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). *See* CAA section 110(a)(1).

- B. Local adoption of federal NSPS or NESHAP requirements either by reference or by adopting text identical to or modified from the requirements found in 40 CFR part 60 (“Standards of Performances for New Stationary Sources”) or 61 (“National Emission Standards for Hazardous Air Pollutants”). Because the EPA has independent authority to implement 40 CFR parts 60 and 61, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

- C. Rules that govern local hearing board procedures and other administrative requirements such as fees, frequency of meetings, salaries paid to board members, and procedures for petitioning for a local hearing.

- D. Variance provisions that provide for modification of the requirements of the applicable SIP. State- or district-issued variances provide an applicant with a mechanism to obtain relief from state enforcement of a state or local rule under certain conditions. Pursuant to Federal law, specifically section 110(i) of the CAA, 42 U.S.C. 7410(i), neither the EPA nor a state may revise a SIP by issuing an “order, suspension, plan revision or other action modifying any requirement of an applicable implementation plan” without a plan

¹ An example of such a rule is as follows: A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

promulgation or revision. The EPA and California have long recognized that a state-issued variance, though binding as a matter of state law, does not prevent the EPA from enforcing the underlying SIP provisions unless and until the EPA approves that variance as a SIP revision. The variance provisions included in today's action are deficient for various reasons, including their failure to address the fact that a state- or district-issued variance has no effect on federal enforceability unless the variance is submitted to and approved by the EPA as a SIP revision. Therefore, their inclusion in the SIP is inconsistent with the Act and may be confusing to regulated industry and the general public. Moreover, because state-issued variances require independent EPA approval to modify the substantive requirements of a SIP, removal of these variance provisions from the SIP will have no effect on regulated entities. *See Industrial Environmental Association v. Browner*, No. 97-71117 (9th Cir., May 26, 2000).

- E. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

III. What is the EPA's Authority to Correct Errors in SIP Rulemakings?

Section 110(k)(6) of the CAA, as amended in 1990, provides that, whenever the EPA determines that the EPA's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such

determination and the basis thereof must be provided to the state and the public. We interpret this provision to authorize the EPA to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. *See* 57 FR 56762, at 56763 (November 30, 1992) (correcting designations, boundaries, and classifications of ozone, carbon monoxide, particulate matter and lead areas).

IV. Which Rules are Proposed for Deletion?

The EPA has determined that the rules listed in table 1 below are inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these rules were submitted by the state and approved by the EPA are provided. We are proposing deletion of these rules and any earlier versions of these rules from the individual air pollution control district portions of the California SIP under CAA section 110(k)(6) as inconsistent with the requirements of CAA section 110.² A brief discussion of the proposed deletions is provided in the following paragraphs.

Table 1: Local Air District Rules Proposed for Deletion			
Rule or Regulation	Title	Submittal date	EPA Approval

² The EPA has coordinated with the California Air Resources Board (CARB) to identify district rules appropriate for deletion from the California SIP. CARB has agreed that the deletion of the rules in table 1 pursuant to CAA section 110(k)(6) is appropriate. See letter from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, January 31, 2020.

Placer County Air Pollution Control District (APCD)			
Section 51	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Sacramento Metropolitan Air Quality Management District (AQMD)			
Rule 112	New Source Performance Standards	November 3, 1975	42 FR 28122 (June 2, 1977); corrected at 42 FR 42219 (August 22, 1977)
Rule 113	National Emission Standards for Hazardous Air Pollutants	November 3, 1975	42 FR 28122 (June 2, 1977); corrected at 42 FR 42219 (August 22, 1977)
San Diego County APCD			
Rule 51	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
San Joaquin Valley Unified APCD			
Fresno County APCD Rule 111	Arrests and Notices to Appear	October 23, 1974	42 FR 42219 (August 22, 1977)
Fresno County APCD Rule 418	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Fresno County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
Kings County APCD Rule 419	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Kings County APCD Rule 420	Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
Madera County APCD Rule 418	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Madera County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
Madera County APCD Rule 511	Notice of Hearing	October 15, 1979	46 FR 60202 (December 9, 1981)
Merced County APCD Rule 418	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Merced County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
Merced County APCD Rule 511	Notice of Hearing	August 2, 1976	43 FR 25689 (June 14, 1978)
San Joaquin County APCD Rule 418	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
San Joaquin	Exception	June 30, 1972	37 FR 19812 (September 22, 1972)

County APCD Rule 419			
Stanislaus County APCD Rule 418	Emissions in General	July 19, 1974	42 FR 25501 (May 18, 1977); corrected at 42 FR 42219 (August 22, 1977)
Stanislaus County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
Stanislaus County APCD Rule 505	Petitions for Variances	July 19, 1974	42 FR 25501 (May 18, 1977); corrected at 42 FR 42219 (August 22, 1977)
Tulare County APCD Section 419	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Tulare County APCD Section 420	Exception	October 23, 1974	42 FR 42219 (August 22, 1977)
Tulare County APCD Section 507	Supplemental Information	February 21, 1972	37 FR 10842 (May 31, 1972)
Tulare County APCD Section 508	Matters Initiated by Control Officer or Hearing Board	February 21, 1972	37 FR 10842 (May 31, 1972)
Tulare County APCD Section 515	Record of Proceedings	February 21, 1972	37 FR 10842 (May 31, 1972)
San Luis Obispo County APCD			
Rule 111	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Santa Barbara County APCD			
Rule 17	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Shasta County AQMD			
Rule 4:2	General	November 21, 1986	54 FR 14648 (April 12, 1989).
Siskiyou County APCD			
Rule 4.2	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Rule 4.2-1	Exceptions	March 23, 1988	54 FR 43174 (October 23, 1989)

South Coast AQMD			
Orange County APCD Rule 45	Permit Fees - Open Burning	June 30, 1972	37 FR 19812 (September 22, 1972)
San Bernardino County APCD Rule 120	Fees	February 21, 1972	37 FR 10842 (May 31, 1972)
Tehama County APCD			
Rule 4:4	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Tuolumne County APCD			
Rule 205	Nuisance	July 22, 1975	42 FR 42219 (August 22, 1977)
Rule 703	Contents of Petitions	October 23, 1981	47 FR 23159 (May 27, 1982)
Rule 710	Notice of Public Hearing	October 23, 1981	47 FR 23159 (May 27, 1982)
Ventura County APCD			
Rule 51	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Yolo-Solano AQMD			
Rule 2.5	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Rule 2.6	Additional Exception	February 21, 1972	37 FR 10842 (May 31, 1972)
Rule 5.1	Applicable Articles of the Health and Safety Code	June 22, 1978	44 FR 5662 (January 29, 1979)

Placer County Air Pollution Control District (APCD)

Placer County APCD Section 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Section 51 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Section 51 from the Placer County APCD portion of the California SIP.

Sacramento Metropolitan Air Quality Management District (AQMD)

Sacramento Metropolitan AQMD Rules 112 (New Source Performance Standards) and

113 (National Emission Standards for Hazardous Air Pollutants) require sources to comply with the applicable provisions of the NSPS and NESHAPS promulgated in 40 CFR parts 60 and 61. Because the EPA has independent authority to implement 40 CFR parts 60 and 61, it was not appropriate to make parallel local authorities federally enforceable by approving Rules 112 and 113 into the Sacramento Metropolitan AQMD portion of the California SIP. In this action, we are proposing to delete Rules 112 and 113 from the Sacramento Metropolitan AQMD portion of the California SIP.

San Diego County APCD

San Diego County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 51 from the San Diego County APCD portion of the California SIP.

San Joaquin Valley Unified APCD

Established in 1991, the San Joaquin Valley Unified APCD unified Fresno County APCD, Kern County APCD (San Joaquin Valley portion of Kern County), Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD into a single unified APCD. The San Joaquin Valley Unified APCD portion of the applicable California SIP continues to include certain rules originally adopted by the individual county APCDs and approved by the EPA prior to the establishment of the unified APCD. The following individual county rules are general-nuisance type of prohibitory rules, and were inappropriate for inclusion in the SIP and, thus, were approved by the EPA in error: Fresno County APCD Rule 418 (Nuisance), Kings County APCD Rule 419

(Nuisance), Madera County ACPD Rule 418 (Nuisance), Merced County APCD Rule 418 (Nuisance), San Joaquin County APCD Rule 418 (Nuisance), Stanislaus County APCD Rule 418 (Emissions in General) and Tulare County APCD Section 419 (Nuisance). The following individual county rules provide an exception to the general nuisance rules cited above, and should be deleted if the general nuisance rules are deleted: Fresno County APCD Rule 419 (Exception), Kings County APCD Rule 420 (Exception), Madera County ACPD Rule 419 (Exception), Merced County APCD Rule 419 (Exception), San Joaquin County APCD Rule 419 (Exception), Stanislaus County APCD Rule 419 (Exception) and Tulare County APCD Section 420 (Exception).

In addition, Madera County APCD Rule 511 (Notice of Hearing), Merced County APCD Rule 511 (Notice of Hearing), Stanislaus County APCD Rule 505 (Petitions for Variances) and Tulare County APCD Sections 507 (Supplemental Information), 508 (Matters Initiated by Control Officer or Hearing Board) and 515 (Record of Proceedings) relate to hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete the above county rules from the San Joaquin Valley Unified APCD portion of the California SIP.

Lastly, at 66 FR 47603, at 47608-47609 (September 13, 2001), the EPA proposed to delete Fresno County APCD Rule 111 (Arrests and Notices to Appear), submitted on June 4, 1986, along with all the other county rules titled “Arrests and Notices to Appear.” At 67 FR 2573 (January 18, 2002), the EPA finalized the deletion of the other county rules titled “Arrests and Notices to Appear” but did not finalize the deletion of Fresno County Rule 111 because we realized that the June 4, 1986 version of Rule 111 was not approved into the SIP. *See* 67 FR

2573, at 2575 (January 18, 2002). In this action, we are proposing to delete the version of Fresno County Rule 111 (Arrests and Notices to Appear) that is part of the applicable California SIP, i.e., the version of Fresno County APCD Rule 111 that was submitted on October 23, 1974, and approved at 42 FR 42219 (August 22, 1977), to be consistent with our action on the other corresponding county rules.

San Luis Obispo County APCD

San Luis Obispo County APCD Rule 111 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 111 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 111 from the San Luis Obispo County APCD portion of the California SIP.

Santa Barbara County APCD

Santa Barbara County APCD Rule 17 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 17 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 17 from the Santa Barbara County APCD portion of the California SIP.

Shasta County AQMD

Shasta County AQMD Rule 4:2 (General) relates to hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rule 4:2 from the Shasta County AQMD portion of the California SIP.

Siskiyou County APCD

Siskiyou County APCD Rule 4.2 (Nuisance) is a general-nuisance type of prohibitory

rule. As such, Rule 4.2 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. Siskiyou County APCD Rule 4.2-1 (Exceptions) provides an exception to Rule 4.2 and should be deleted if Rule 4.2 is deleted. In this action, we are proposing to delete Rules 4.2 and 4.2-1 from the Siskiyou County APCD portion of the California SIP.

South Coast AQMD

The South Coast AQMD includes all of Orange County, the non-desert portions of Los Angeles and San Bernardino counties, and all of Riverside County (except for the Palo Verde Valley in far eastern Riverside County). In 1972, when the original California SIP was submitted and approved by EPA, the Los Angeles County APCD, Orange County APCD, Riverside County APCD and San Bernardino County APCD each had jurisdiction over stationary sources within their respective counties. On July 16, 1975, the Los Angeles County APCD, Orange County APCD, Riverside County APCD, and San Bernardino County APCD were unified into the Southern California APCD. On February 1, 1977, the State of California split the Southern California APCD into the South Coast AQMD in the western coastal area (including Orange County, and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties, referred to as the “South Coast Air Basin”) and three separate APCDs (i.e., Los Angeles County APCD, San Bernardino County APCD, and Riverside County APCD, included within the “Southeast Desert Air Basin”), formed out of the remaining parts of three counties in the eastern desert area. See 43 FR 25684 (June 14, 1978). The Southeast Desert portion of Riverside County was added to the South Coast AQMD on December 1, 1977. On July 1, 1994, the Palo Verde Valley area of Riverside County left the South Coast AQMD and joined the Mojave Desert AQMD.

Certain rules adopted by the original county-based APCDs remain part of the applicable SIP for the South Coast AQMD (i.e., have not been deleted or superseded by EPA-approved rules adopted by the Southern California APCD or South Coast AQMD), including Orange County APCD Rule 45 (Permit Fees – Open Burning) and San Bernardino County APCD Rule 120 (Fees). Orange County APCD Rule 45 and San Bernardino County APCD Rule 120 are local fee provisions that were not appropriate for inclusion in the SIP, and thus, were approved by the EPA in error. In this action, we are proposing to delete Orange County APCD Rule 45 and San Bernardino County APCD Rule 120 from the South Coast AQMD portion of the California SIP.

Tehama County APCD

Tehama County APCD Rule 4:4 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 4:4 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 4:4 from the Tehama County APCD portion of the California SIP.

Tuolumne County APCD

Tuolumne County APCD Rule 205 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 205 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. Tuolumne County APCD Rules 703 (Contents of Petitions) and 710 (Notice of Public Hearing) relate to hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 205, 703 and 710 from the Tuolumne County APCD portion of the California SIP.

Ventura County APCD

Ventura County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 51 from the Ventura County APCD portion of the California SIP.

Yolo-Solano AQMD

Yolo Solano AQMD Rule 2.5 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 2.5 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. Yolo-Solano AQMD Rule 2.6 (Additional Exception) provides an exception to Rule 2.5 and should be deleted if Rule 2.5 is deleted. Yolo-Solano AQMD Rule 5.1 (Applicable Articles of the Health and Safety Code) relates to hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 2.5, 2.6 and 5.1 from the Yolo-Solano AQMD portion of the California SIP.

V. What Other Corrections is the EPA Proposing to Make?

The EPA is also proposing certain error corrections not because the rules were originally approved into the SIP in error but because of other types of errors made in the course of the SIP rulemaking action. Each such proposal is described in the following paragraphs.

Placer County APCD

Publisher's Error in Connection with Approval of Rule 243 (Polyester Resin Operations): On October 3, 2011 (76 FR 61057), the EPA approved Placer County Rule 243 (Polyester Resin Operations), as submitted on December 7, 2010, and the amendatory instructions listed the approval of Rule 243 correctly at 40 CFR 52.220(c)(389)(i)(B)(1).

However, due to a publisher's error, the approval of Placer County APCD Rule 243 is listed at 40 CFR 52.220(c)(390)(i)(B)(1). We are proposing to correct this error by amending the two paragraphs in 40 CFR 52.220(c) accordingly.

San Diego County APCD

Erroneous Listing of Certain Rules as San Diego County APCD Rules: On June 2, 1977 (42 FR 28122), the EPA took final action to approve Rules 112 and 113 adopted by the Sacramento Metropolitan AQMD and codified the approval at 40 CFR 52.220(c)(29)(v)(B). On August 22, 1977 (42 FR 42219), the EPA redesignated the paragraph listing the approval of Sacramento Metropolitan AQMD Rules 112 and 113 to 40 CFR 52.220(c)(29)(ii)(B) but failed to delete 40 CFR 52.220(c)(29)(v)(B). *See* 42 FR 42219, at 42225 (August 22, 1977). Paragraph 40 CFR 52.220(c)(29)(v) lists EPA-approved rules adopted by the San Diego County APCD, and the failure to delete 40 CFR 52.220(c)(29)(v)(B) makes it appear that Rules 112 and 113 are part of the San Diego County APCD portion of the applicable SIP but, as explained herein, they are not. Today, we are proposing to delete 40 CFR 52.220(c)(29)(v)(B).

Failure to Codify Approval of Amendments to San Diego County APCD Rule 20.1: On July 6, 1982 (47 FR 29231), the EPA took final action to approve certain rules adopted by the San Diego County APCD, including amendments to Rule 20.1 (Definitions, Emission Calculations, Emission Offsets and Banking, Exemptions, and Other Requirements), submitted on January 28, 1981. However, we failed to codify the approval of Rule 20.1 at 40 CFR 52.220(c)(98)(xi), the subsection listing San Diego County APCD rules submitted on January 28, 1981 and approved by the EPA. We propose to do so in today's action. We note that the amendments to Rule 20.1 that were approved on July 6, 1982, were recently superseded in the

applicable San Diego County APCD portion of the California SIP by approval of a further amended version of Rule 20.1 (New Source Review – General Provisions) at 83 FR 50007 (October 4, 2018).

Publisher's Error Deleting Codification of Approval of San Diego County APCD Rule

67.0: On June 30, 1993 (58 FR 34904), the EPA took final action to approve San Diego County Rule 67.0 (Architectural Coatings), adopted on December 4, 1990, as a revision to the California SIP. We codified the approval at 40 CFR 52.220(c)(184)(i)(D)(1) but failed to include introductory text identifying the San Diego County APCD as the relevant air pollution control agency associated with Rule 67.0. On August 4, 2000 (65 FR 47862), we added introductory text identifying San Diego County APCD at 40 CFR 52.220(c)(184)(i)(D) but, due to a publisher's error, the regulatory text listing the approval of Rule 67.0 was erroneously deleted. While the December 4, 1990 version of San Diego County APCD Rule 67.0 has since been superseded in the applicable California SIP, we propose to re-instate 40 CFR 52.220(c)(184)(i)(D)(1) to maintain an accurate accounting of the version of Rule 67.0 that applied for federal enforcement purposes at different times in the past.

Erroneous Codification of Approval of San Diego County APCD Rule 67.11: On April 11, 2013 (78 FR 21537), the EPA took final action to approve San Diego County APCD Rule 67.11 (Wood Products Coating Operations), submitted on September 21, 2012. We erroneously codified the approval of Rule 67.11 at 40 CFR 52.220(c)(307), which lists approved rules submitted on November 19, 2002. We propose to redesignate the paragraph listing the approval of Rule 67.11 from 40 CFR 52.220(c)(307) to 40 CFR 52.220(c)(423), which lists approved rules submitted on September 21, 2012.

San Joaquin Valley Unified APCD

Failure to Include Introductory Text for Approval of Rules Submitted on May 13, 1980, including Fresno County APCD Rules 410, 411.1 and 416.1: On May 13, 1980, the California Air Resources Board (CARB) submitted certain amended rules to the EPA as a revision to the California SIP, including Fresno County Rules 410 (Storage of Organic Liquids), 411.1 (Transfer of Gasoline into Vehicle Fuel Tanks – Phase II) and 416.1 (Agricultural Burning). We codified our approval of the rules submitted on May 13, 1980, at 40 CFR 52.220(c)(83), *see, e.g.*, 47 FR 29668 (July 8, 1982)(Approval of Fresno County APCD Rule 410) and 46 FR 60202 (December 9, 1981) (Approval of Fresno County APCD Rules 411.1 and 416.1), but inadvertently failed to identify the submittal date and, in two instances, failed to identify the applicable air pollution control district for the approved rules as the Bay Area AQMD and the Fresno County APCD, respectively. In this action, we propose to add introductory text to 40 CFR 52.220(c)(83) specifying a submittal date of May 13, 1980, and to properly designate subparagraph (i) as the Bay Area AQMD and subparagraph (iii) as the Fresno County APCD.

Publisher's Error in Connection with Supersession of San Joaquin County APCD Rules 413.2 and 413.3: On September 23, 2010 (75 FR 57862), the EPA approved San Joaquin Valley Unified APCD Rules 4453 (Refinery Vacuum Producing Devices or Systems) and 4454 (Refinery Process Unit Turnaround) and codified the supersession of the relevant county-level APCD SIP rules, including San Joaquin County APCD Rules 413.2 (Refinery Vacuum Producing Devices) and 413.3 (Refinery Process Unit Turnaround) in the existing SIP. The codification of the supersession of San Joaquin County APCD Rules 413.2 and 413.3 was intended to be published at paragraph 40 CFR 52.220(c)(52)(vii), which lists San Joaquin

County APCD rules, but, due to a publisher's error, it was published instead at paragraph 40 CFR 52.220(c)(52)(vi), which lists rules adopted by Merced County APCD. In this action, we propose to redesignate paragraph 40 CFR 52.220(c)(52)(vi)(D) as paragraph 40 CFR 52.220(c)(52)(vii)(D) to correct this error.

Erroneous Amendatory Instruction Related to Approval of San Joaquin County APCD

Rules 409.7 and 409.8: On June 18, 1982 (47 FR 26384), the EPA took final action to approve certain regulations adopted by the San Joaquin County APCD, including Rules 409.7 (Graphic Arts) and 409.8 (Perchloroethylene Dry Cleaning Systems), submitted on July 14, 1981. Due to erroneous amendatory instructions, the approval of San Joaquin County APCD Rules 409.7 and 409.8 was published as subparagraph (B) under paragraph 40 CFR 52.220(c)(102)(ii), which lists rules adopted by the Stanislaus County APCD, instead of subparagraph (B) under paragraph 40 CFR 52.220(c)(102)(i), which lists rules adopted by the San Joaquin County APCD. In this action, we propose to redesignate paragraph 40 CFR 52.220(c)(102)(ii)(B) as 40 CFR 52.220(c)(102)(i)(B) to correct this error.

Santa Barbara County APCD

Erroneous Codification of Approval of Santa Barbara County APCD Rule 337: On April 11, 2013 (78 FR 21537), the EPA took final action to approve Santa Barbara County APCD Rule 337 (Surface Coating of Aerospace Vehicles and Components), submitted on September 21, 2012. We erroneously codified the approval of Rule 337 at 40 CFR 52.220(c)(214), which lists approved rules submitted on January 24, 1995. We propose to redesignate the paragraph listing the approval of Rule 337 from 40 CFR 52.220(c)(214) to 40 CFR 52.220(c)(423), which lists approved rules submitted on September 21, 2012.

Inadvertent Failure to Add Introductory Text in Connection with Approval of Santa

Barbara County APCD Rule 316: On August 30, 1993 (58 FR 45442), the EPA took final action to approve Santa Barbara County APCD Rule 316 (Storage and Transfer of Gasoline), submitted on April 5, 1991, and codified the approval at 40 CFR 52.220(c)(183)(i)(E)(2) but inadvertently failed to add introductory text identifying Santa Barbara County APCD as the applicable air district for approved rules listed under paragraph (E). In this action, we propose to revise 40 CFR 52.220(c)(i)(E) to add “Santa Barbara County Air Pollution Control District” to clarify the applicability of Rule 316 listed in subparagraph (E)(2).

Shasta County AQMD

Typographical Error in Connection with Deletion of Shasta County AQMD Rule 2:19:

On January 22, 2004 (69 FR 3045, at 3053), the EPA proposed to delete various local rules from the California SIP, including a Shasta County AQMD rule titled “Change in Multi-Component System.” However, due to a typographical error, the rule titled “Change in Multi-Component System” was identified as Rule 2:22. The correct rule number is Rule 2:19. On November 16, 2004 (69 FR 67062), the EPA took final action to delete the rule and carried forward the typographical error in regulatory text found at 40 CFR 52.220(c)(6)(xxiii)(A). We are proposing in this action to correct the regulatory text at 40 CFR 52.220(c)(6)(xxiii)(A) to indicate that Shasta County AQMD Rule 2:19, rather than Rule 2:22, has been deleted without replacement.

Siskiyou County APCD

Typographical Error in Connection with Approval of Siskiyou County APCD Rules

Submitted on March 18, 1987: On April 12, 1989 (54 FR 14648), the EPA took final action to approve certain Siskiyou County APCD rules submitted on March 18, 1987. We codified the

approval at 40 CFR 52.220(c)(172) but, due to a typographical error, listed the submittal date as “March 11, 1987,” instead of the correct date of March 18, 1987. We are proposing in this action to correct the regulatory text at 40 CFR 52.220(c)(172) to identify “March 18, 1987” as the submittal date for the rules listed under that paragraph.

South Coast AQMD

Rescission of Orange County APCD Regulation VI (Orchard or Citrus Grove Heaters):

Orange County APCD Regulation VI includes the following rules: Rule 100 (Definitions), Rule 101 (Use and Sale of Orchard Heaters), Rule 102 (Permit Required), Rule 103 (Transfer of Permits), Rule 105 (Application for Permits), Rule 106 (Action on Applications), Rule 107 (Standards for Granting Permits), Rule 108 (Conditional Approval), Rule 109 (Denial of Applications), Rule 110 (Appeals), Rule 120 (Fees), Rule 122 (Classification of Orchard Heaters), Rule 123 (Class I Heaters Designated - Permits), Rule 124 (Class II Heaters Designated – Permits), Rule 126 (Identification of Heaters), Rule 127 (Maintenance of Heaters), Rule 128 (Classification of Undesignated Heaters) and Rule 130 (Prohibitions). California submitted Orange County APCD Regulation VI on February 21, 1972, and the EPA approved the regulation on May 31, 1972 (37 FR 10842). On June 30, 1972, California submitted an amended definition in Rule 100 and submitted amended versions of Rules 101 and 102, and the EPA approved the amendments on September 22, 1972 (37 FR 19812). Rule 120 was deleted without replacement at 67 FR 2573 (January 18, 2002), but the other Regulation VI rules remain in the SIP.

In an action affecting the South Coast AQMD published at 43 FR 25684 (June 14, 1978), the EPA indicated: “The changes to Regulation VI, Orchard Grove Heaters, contained in the

above mentioned submittals and being acted upon by this notice include total replacement of county rules by California Health and Safety Code sections covering Orchard Heaters.” 43 FR at 25685. However, the regulatory text deleting Regulation VI without replacement was not included in the final rule, and thus, Orange County APCD Regulation VI remains part of the applicable SIP.³ In this action, we are proposing to add regulatory text deleting Orange County Regulation VI, as approved on May 31, 1972 and September 22, 1972, consistent with our action as described in the preamble to the June 14, 1978 final rule.

Tehama County APCD

Publisher’s Error in Connection with Deletion without Replacement of San Diego County APCD Rule 41: On June 27, 1997 (62 FR 34641), the EPA took final action to delete without replacement certain district rules that had been approved in error, including San Diego County APCD Rule 41 (Annual Permit Renewal Fees), which was submitted on July 25, 1973 and approved on May 11, 1977. The amendatory instructions in the June 27, 1997 final rule called for publishing the corresponding regulatory text at 40 CFR 52.220(c)(21)(vi)(B), which relates to San Diego County APCD rules; however, due to a publisher’s error, the corresponding regulatory text was published at 40 CFR 52.220(c)(21)(vii)(B), which sets forth regulatory text for Tehama County APCD rules. On March 23, 1999 (64 FR 13916), the missing paragraph (40 CFR 52.220(c)(21)(vi)(B)) was added but the erroneous publication at 40 CFR 52.220(c)(21)(vii)(B) was left in place. In this action, we propose to remove 40 CFR 52.220(c)(21)(vii)(B) from the CFR.

³ In contrast, in a September 8, 1978 final rule, the EPA included similar preamble text concerning an analogous Regulation VI adopted by Los Angeles County APCD and Riverside County APCD, but added specific regulatory text to delete Regulation VI in the Southeast Desert portions of Los Angeles County and Riverside County. See 43 FR 40011, at 40012 and 40014 (September 8, 1978).

Tuolumne County APCD

Reinstatement of Tuolumne County APCD Rule 516 (Excluding Paragraph (C)): On June 27, 1997 (62 FR 34641), the EPA took final action to correct certain errors in previous actions on SIPs and SIP revisions by deleting without replacement the affected local rules. With respect to a rule that was adopted by the Tuolumne County APCD, submitted by California on October 23, 1981, and approved by the EPA on May 27, 1982 (47 FR 23159), we added a paragraph, i.e., (c)(103)(xvii)(B), to 40 CFR 52.220 (Identification of plan) that states: “Previously approved on May 27, 1982 and now deleted without replacement Rule 516.” 62 FR at 34647. However, in our proposed error correction, 61 FR 38664, at 38680 (July 25, 1996), we indicated that the rule we intended to delete was Rule 516 (“Emergency Variance Procedures”), but the correct title of Rule 516 is “Upset and Breakdown Conditions,” and “Emergency Variance Procedures” is the title of one of the paragraphs, i.e., paragraph (C), of Rule 516. Thus, we intended to delete only paragraph (C) of Rule 516 but erroneously indicated in the final rule that we were deleting without replacement the entire rule. Accordingly, we propose to amend paragraph (c)(103)(xvii)(B) to refer only to paragraph (C) of Rule 516.

Ventura County APCD

Erroneous Regulatory Text for Approval of Rescission of Ventura County APCD Rule 18: On December 7, 2000 (65 FR 76567), the EPA took final action approving certain rules and rule rescissions adopted by the Ventura County APCD establishing procedures and criteria for issuing permits to new or modified stationary sources, including the rescission of Rule 18 (Permit to Operate - Application Required for Existing Equipment). The specific version of Rule 18 for which we approved rescission was submitted on June 30, 1972 and approved on September 22,

1972 (37 FR 19812); however, we erroneously added the corresponding regulatory text to 40 CFR 52.220(b), which lists rules submitted on February 21, 1972 and approved on May 31, 1972 (37 FR 10842). The regulatory text belongs under 40 CFR 52.220(c)(6)(xxiv). In this action, we propose to redesignate the regulatory text accordingly.

Inadvertent Failure to Include Introductory Text for Approval of Ventura County APCD

Rule 74.6: On July 1, 1982 (47 FR 28617), the EPA took final action to approve Ventura County APCD Rule 74.6 (Surface Cleaning and Degreasing). In our final rule, we codified our approval of Rule 74.6 at 40 CFR 52.220(c)(82)(i)(A) but inadvertently failed to add introductory text specifying the date of submittal. In this action, we propose to add introductory text to 40 CFR 52.220(c)(82) specifying a submittal date of May 1, 1980.

Inadvertent Failure to Remove Listing of Sacramento Metropolitan AQMD Rules 70, 73, 96 and 111 from Paragraph Listing Ventura County APCD Rules: Rules 70, 73, 96 and 111 are among a set of Sacramento Metropolitan AQMD rules that were approved at 42 FR 28122 (June 2, 1977); corrected at 42 FR 42219 (August 22, 1977). In the June 2, 1977 action, the EPA codified the Sacramento Metropolitan AQMD rules on which the Agency was taking action at 40 CFR 52.220(c)(24)(x)(A)-(E). The August 22, 1977 action corrected the list of Sacramento Metropolitan AQMD rules for which the EPA had taken action and recodified the action at 40 CFR 52.220(c)(24)(viii)(A). The August 22, 1977 inadvertently failed to delete the original codification of the action on the Sacramento Metropolitan AQMD rules at 40 CFR 52.220(c)(24)(x). Since then, the EPA has taken action on certain Ventura County APCD rules and codified those actions at 40 CFR 52.220(c)(24)(x)(A) and (B), but subparagraphs (C)-(E) remain in the CFR and now appear as if they are Ventura County APCD rules. In this action, we

are proposing to remove and reserve subparagraphs (C)-(E) under 40 CFR 52.220(c)(24)(x).

Inadvertent Failure to Codify Approval of Rescission of Ventura County APCD Rule

74.6.3: The EPA approved certain rules adopted by the Ventura County APCD, including Rule 74.6.3 (Conveyorized Degreasers) at 65 FR 45294 (July 21, 2000). We codified our approval of these rules at 40 CFR 52.220(c)(241)(i)(C). On October 25, 2005 (70 FR 61561), we approved revisions to certain Ventura County APCD rules, including the rescission of Rule 74.6.3. In the October 25, 2005 direct final rule, we explained that Rule 74.6.3 was being rescinded because there are currently no conveyorized degreasers operating in Ventura County. 70 FR 61561, at 61562. However, we inadvertently failed to codify the rescission of Rule 74.6.3 in the regulatory portion of the final rule. In this action, we are proposing to add regulatory text to codify our approval of the rescission of Rule 74.6.3 by adding a paragraph to that effect at 40 CFR 52.220(c)(241)(i)(C).

Yolo-Solano AQMD

Publisher's Error in Connection with Approval of Yolo-Solano AQMD Rules Submitted on February 25, 1980: On June 18, 1982 (47 FR 26379), the EPA took direct final action to approve certain revisions to the Yolo-Solano AQMD portion of the California SIP. In the direct final rule, we approved Yolo-Solano AQMD Rules 3.4.1 (Standards for Granting Applications), 3.4.2 (Conditional Approval), and 3.13 (Public Review and Comment for Application for Authority to Construct) and codified the approval at 40 CFR 52.220(c)(54)(iv)(C). However, due to a publisher's error, the codification of the approval of the three rules was repeated at 40 CFR 52.220(c)(54)(v)(C) as if they were rules adopted by the Sacramento Metropolitan AQMD. We are proposing to delete the erroneous regulatory text now found at 40 CFR 52.220(c)(54)(v)(C).

Inadvertent Failure to Codify Approval of Yolo-Solano AQMD Rules 3.4.1 and 3.4.2: On June 18, 1982 (47 FR 26379), the EPA took direct final action to approve certain revisions to the Yolo-Solano AQMD portion of the California SIP. In the direct final rule, we approved Yolo-Solano AQMD Rules 3.4.1 (Standards for Granting Applications), 3.4.2 (Conditional Approval), and 3.13 (Public Review and Comment for Application for Authority to Construct) and codified the approval at 40 CFR 52.220(c)(54)(iv)(C). However, in response to the direct final rule, we received adverse comment concerning our approval of Rules 3.4.1 and 3.4.2, and on June 24, 1983 (48 FR 28988), we withdrew their approval. Later than year, we took final action to approve Rules 3.4.1 and 3.4.2 after consideration of public comment, 48 FR 52712 (November 22, 1983), but failed to add corresponding regulatory text in 40 CFR 52.220(c)(54)(iv). In this action, we propose to add a new paragraph, 40 CFR 52.220(c)(54)(iv)(E), codifying our 1983 approval of Yolo-Solano AQMD Rules 3.4.1 and 3.4.2.

Publisher's Error in Connection with Yolo-Solano AQMD Rules Submitted on October 15, 1979: On December 9, 1981 (46 FR 60202), the EPA took final action to approve certain revisions to the Fresno County APCD portion of the California SIP that had been submitted on October 15, 1979, including Rules 301 (Permit Fees), 302 (Permit Fee Schedules) and 305 (Hearing Board Fees). We codified the approval of these Fresno County APCD rules at 40 CFR 52.220(c)(52)(xv)(B). However, due to a publisher's error, the codification of the approval of the three rules was repeated at 40 CFR 52.220(c)(52)(xix)(B) as if they were rules adopted by the Yolo-Solano AQMD. We are proposing to delete the erroneous regulatory text now found at 40 CFR 52.220(c)(52)(xix)(B).

VI. Proposed Action and Request for Public Comment

The EPA has reviewed the rules listed in table 1 above and determined that they were previously approved into the applicable California SIP in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, under section 110(k)(6) of the CAA, the EPA is proposing to delete the rules listed in table 1 above and any earlier versions of these rules from the individual air pollution control district portions of the California SIP. These rules include general nuisance provisions, Federal NSPS or NESHAP requirements, hearing board procedures, variance provisions, and local fee provisions. We are also proposing to make certain other corrections to fix errors in previous rulemakings on California SIP revisions as described in section V above. We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

VII. Incorporation by Reference

In this action, for the most part, the EPA is proposing to delete rules that were previously incorporated by reference from the applicable California SIP. However, we are also proposing to include in a final EPA rule regulatory text that includes incorporation by reference of rules not previously incorporated. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference certain San Diego County APCD and Yolo-Solano AQMD rules, as described in section V of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely corrects errors in previous rulemakings and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2020.

John Busterud,

Regional Administrator,

Region IX.

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